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3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

5 DOMONIC RONALDO MALONE,

6 Plaintiff,

7 v.

8 NEVADA DEPARTMENT OF
CORRECTIONS, *et al.*,

9 Defendants.
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11

Case No. 2:20-CV-0504-GMN-EJY

**ORDER ON MOTION TO STAY
COLLECTION OF FILING FEES
PENDING APPEAL**

12 On May 14, 2021, the Court granted Plaintiff's application to proceed *in forma*
13 *pauperis*. ECF No. 9 at 8. The Court permitted Plaintiff to proceed without initially paying
14 the filing fee and instead ordered Plaintiff to make monthly partial payments until the full
15 filing fee was paid. *Id.* In addition, the Court ordered the Nevada Department of
16 Corrections (NDOC) to collect this monthly payment from Plaintiff's prison account and to
17 forward that payment to the Court. *Id.* The Court also screened Plaintiff's First Amended
18 Complaint, dismissed certain claims with prejudice and dismissed the remaining claims
19 without prejudice but without leave to amend. *Id.* at 9. Plaintiff has filed a notice of
20 appeal and now moves to stay the NDOC from collecting and forwarding Plaintiff's
21 monthly partial payment of the filing fee. ECF No. 11.

22 In deciding a motion to stay an order pending appeal, the Court considers: "(1)
23 whether the stay applicant has made a strong showing that he is likely to succeed on the
24 merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether
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1 issuance of the stay will substantially injure the other parties interested in the proceeding;
2 and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434, (2009)
3 (citations omitted). “The first two factors ... are the most critical” and the Court considers
4 the last two only “[o]nce an applicant satisfies the first two factors.” *Id.* at 434–35.

5 The Court applies a flexible, sliding scale approach when considering a motion to
6 stay pending an appeal. *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (per
7 curiam). Under this approach, “a stronger showing of one element may offset a weaker
8 showing of another.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th
9 Cir. 2011).

10 Plaintiff has not offered any argument suggesting that he is likely to succeed on the
11 merits. Plaintiff asserts that he is bringing his appeal to reverse this Court’s decision to
12 dismiss certain claims without prejudice but without leave to amend.

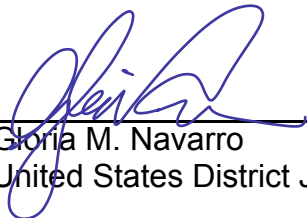
13 Even assuming Plaintiff succeeds in his appeal, and he is permitted to pursue
14 those claims in this action, he will remain obligated to pay the full filing fee he is obligated
15 to pay for initiating this litigation. Plaintiff applied to be permitted to proceed *in forma*
16 *pauperis*. Because the Court granted his application, Plaintiff was permitted to initiate this
17 litigation without initially paying the full filing fee but instead is permitted to pay that
18 obligation in monthly installments collected and forwarded by the NDOC to the Court.
19 Plaintiff has not offered any argument suggesting the Court erred in granting his
20 application to proceed *in forma pauperis*. Plaintiff has not offered any argument
21 suggesting the Court erred in allowing him to proceed without paying an initial filing fee.
22 Plaintiff has not offered any argument the Court erred in allowing him to pay the full filing
23 fee in monthly partial installments. Similarly, Plaintiff has not offered any argument that
24 he will be irreparably harmed by continuing to pay monthly installments toward the filing

1 fee that, regardless of whether he is successful on appeal, he will remain obligated to
2 pay. The Court finds that Plaintiff has neither made a strong showing that he is likely to
3 succeed on the merits whether he is obligated to pay the full filing fee in monthly
4 installments nor has he shown he will be irreparably injured absent a stay.

5 Therefore,

6 THE COURT **ORDERS** that Plaintiff's motion for stay of collection of the filing fee
7 (ECF No. 11) is **DENIED**.

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9 DATED THIS 3 of June 2021.

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13 Gloria M. Navarro
14 United States District Judge
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